

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
v.)	I.D. # 0107007736
)	
)	
MILES E. BRICE,)	
Defendant.)	

Submitted: September 16, 2008
Decided: February 26, 2009

Memorandum Opinion

Upon Defendant's Motion for Postconviction Relief and Request for
Appointment of Counsel:
DENIED.

Paul R. Wallace, Esq., Dept. of Justice, 820 North French St., Sixth Floor,
Wilmington, DE. 19801.

Joseph A. Gabay, Esq., 901 North Market Street, Suite 840, P.O. Box 2365,
Wilmington, DE 19899

Miles E. Brice, Delaware Correctional Center, 1181 Paddock Road, Smyrna,
Delaware 19977, *pro se*.

Scott, J.

I. INTRODUCTION

The defendant pled guilty to two counts of First Degree Felony Murder and one count of Possession of a Deadly Weapon by a Person Prohibited (PDWBPP). In light of the revised interpretation of *Del. C* § 636(a)(2) as set forth in *Williams v. State*,¹ he asks this Court to vacate his convictions for Felony Murder and either resentence him for two counts of manslaughter or grant him a new trial. Because the defendant pled guilty to Felony Murder after the decision in *Williams* was announced, he fails to establish a new retroactive right applicable to his case and thus his claim is **SUMMARILY DISMISSED** as procedurally time barred. Consequently, his request for the appointment of counsel is **DENIED**.

II. BACKGROUND

On July 11, 2003, the defendant, Miles E. Brice (“Brice”), and co-defendant Leon Caulk (“Caulk”) arrived at Lexington Green apartments and encountered Forrest Green (“Green”) with whom they had an ongoing feud.² Brice and Caulk chased Green as he fled to his girlfriend’s apartment. Green reached his girlfriend’s apartment and as he attempted to close the door, Brice and Caulk began pushing in from the other side. Brice and

¹ 818 A.2d 906 (Del. 2002).

² The facts are taken primarily from the presentence report, the transcript of Brice’s preliminary hearing and the State’s Response.

Caulk pulled their hands out from the door as Green closed the door.

Immediately thereafter, Brice pulled out a semi-automatic handgun and began firing shots into the door. Eleven of the twelve 9 millimeter bullets went through the door and into the apartment. Nicole Custis (“Custis”), who was assisting Green close the door, was shot in the head and died instantly. Brandon Durant, a sixteen year-old who had attempted to push Custis out of the way was shot in the chest and died shortly after his arrival at Christiana Hospital. Green was shot in the back of his left shoulder. He survived and was able to call the police from the back bedroom.

Brice and Caulk fled from the apartment building. The next day, police detectives were led to a residence in Seaford, Delaware where the defendants were hiding out. The detectives discovered the murder weapon under the sofa cushion where Brice was sitting when they arrived. Brice and Caulk were both charged with murder and related offenses.

Jury selection in Brice’s capital murder trial began on November 24, 2003. The State began presenting evidence on December 2, 2003 and concluded on December 4, 2003. Brice called only one witness, his co-defendant Caulk. On December 8, 2003, before the case was submitted to the jury, Brice accepted the State’s offer in order to avoid a possible death sentence. He pled guilty to two counts of First Degree Felony Murder and

one count of PDWBPP. On March 12, 2004, he was sentenced to two life sentences without parole plus five additional years for the PDWPBB conviction. Brice did not appeal his conviction or sentence. On January 7, 2008, he brought this current motion for postconviction relief.

III. DISCUSSION

Before addressing the merits of a postconviction relief claim, the Court must first determine whether the claims pass through the procedural filters of Rule 61.³ To protect the integrity of the procedural rules, the Court will not address the substantive aspects of the claims if a defendant's claims are procedurally barred. Rule 61(i) provides:

- (1) Time limitation. A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court;
- (2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice;
- (3) Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows
 - (A) Cause for relief from the procedural default and
 - (B) Prejudice from violation of the movant's rights;

³ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991) (“The first inquiry in any analysis of a post-conviction relief claim is whether the petition meets the procedural requirements of Rule 61.”) *See also Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

(4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice;

(5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

Because Brice filed the current postconviction motion almost four years after his final conviction⁴, his motion is procedurally barred under Rule 61(i)(1). In order to avoid procedural default, Brice asserts a new retroactive right based on the Delaware Supreme Court's holding *Williams v. State*.⁵ In *Williams*, the Delaware Supreme Court revised the interpretation of the “in the course of” and “in furtherance of” language of 11 *Del. C.* § 636(a)(2) and held that a defendant may not be convicted of felony murder unless it has been established that the murder helped to move the underlying felony forward.⁶ Under this revised interpretation, Brice claims that his

⁴ Brice was sentenced on March 12, 2004 and he did not file a direct appeal. Thus, pursuant to Super. Ct. Crim. R. 61(m)(1), his judgment of conviction became final thirty days after his sentencing date.

⁵ *Williams*, 818 A.2d 906.

⁶ The Court in *Williams* overruled *Chao v. State*, which held that in order “[f]or felony murder liability to attach, a killing need only accompany the commission of an underlying felony. Thus, if the ‘in furtherance’ language has any limiting effect, it is

felony murder convictions should be vacated because there was insufficient evidence to support a finding that the killings of Nicole Custis and Brandon Durant were committed in order to “facilitate” burglary.⁷

The decision in *Williams* is inapplicable to Brice’s felony murder convictions. The decision in *Williams* was released in April of 2003, well before Brice pled guilty on December 8, 2003. Brice was aware of the import of *Williams*, as is evident by his motion to dismiss filed on April 16, 2003.⁸ His plea was an admission that he committed reckless felony murder as defined by the decision in *Williams*. Because the retroactive right recognized in *Williams* is inapplicable to Brice’s felony murder convictions, his claim is procedurally time barred under Rule 61(i)(1). Furthermore, by voluntarily pleading guilty, Brice waived his right to challenge the sufficiency of evidence presented against him⁹ and therefore he fails to establish a colorable claim that there has been a “miscarriage of justice” in this case pursuant to Rule 61(i)(5).

Brice also asks this Court to appoint him counsel asserting that “this is a complex and extraordinary case.” The Court disagrees. Brice voluntarily and intelligently pled guilty to felony murder as it was defined by *Williams*.

solely to require that the killing be done by the felon, him or himself.” 604 A.2d 1351 (Del. 1992).

⁷ Movant’s Reply to the State’s Response at 2, D.I. 75.

⁸ Motion to Dismiss, D.I. 45.

⁹ See *State v. Stigars*, 1999 WL 1568373, at *2 (Del. Super.)

On December 8, 2003, the Court engaged in plea colloquy with Brice. At the colloquy the following transpired:¹⁰

The Court: Have you discussed fully your rights with your lawyers?

Defendant: Yes, I have.

The Court: Are you satisfied with their advice to you?

Defendant: Yes.

The Court: And you understand since you have been involved in this trial that you could allow the jury to decide your case?

The Defendant: Yes.

The Court: The indictment charges in Count 1 with on or about the 11th day of July, 2001, New Castle County, State of Delaware, you did in the course of and in furtherance of the commission of Attempted Burglary Second Degree recklessly cause the death of Nicole Custis. Did you do that?

The Defendant: Yes, I did.

The Court: And Count 5 charges that on or about the 11th day of July, 2001, New Castle County, State of Delaware, you did in the course of and in furtherance of the commission of Attempted Burglary Second Degree recklessly cause the death of Brandon Durant?

The Defendant: Yes, I did.

The Court: Did you do that?

The Defendant: Yes, I did.

¹⁰ Guilty Plea Tr., 5:21-7:2, Dec. 8, 2003.

In lieu of Brice's guilty plea to two counts of Felony Murder, the State entered a *nolle prosequi* for all remaining charges and did not seek the death penalty. Brice proffers no reason why the Court should question the bargain from which he received such a substantial benefit. Accordingly, the appointment of counsel in this case is unwarranted.

Based upon the above reasoning, the defendant's Motion for Postconviction Relief is **SUMMARILY DISMISSED** and his Request for the Appointment of Counsel is **DENIED**.
IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.